

EXECUTIVE SECRETARIAT**Routing Slip**

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Remarks:

Executive Secretary

8/5/83

Date

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United States Department of State

Washington, D.C. 20520
August 3, 1983

Executive Registry

83-3964

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Interagency Group No. 32

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TO: NSC - Mr. Robert Kimmitt
CIA -
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EPA - Mr. Fitz Hugh Green
Interior - Mr. Barry Allbright
JCS - LTC Dennis Stanley
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Treasury - Mr. David Pickford
UNA - Amb. Harvey Feldman

SUBJECT: August 15 Meeting on Ocean Dumping Issues

A Meeting of the Interagency Group on Ocean Policy and Law of the Sea is scheduled for August 15 in Room 1105, Department of State, 2201 C Street, N.W., at 9:30 AM to consider the following issues relating to ocean dumping:

1. Should the U.S. officially recognize coastal state jurisdiction over dumping within 200 nautical miles?
2. Should the Administration seek legislation extending U.S. jurisdiction over foreign dumping to coincide with the U.S. EEZ?
3. What should be the U.S. position on whether seabed disposal of high-level radioactive and hazardous wastes is included in the definition of dumping at sea for purposes of the London Dumping Convention (LDC)?

Assistant Secretary James L. Malone will chair the meeting. The attachment provides a brief background on each issue. Please direct any questions to P. Bernhardt, OES/OLP, 632-9616.

for Charles Hill
Executive Secretary

Attachment:

As stated.

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1. ISSUE FOR DECISION

Should the U.S. officially recognize coastal state jurisdiction over dumping within 200 nautical miles of its territory?

On March 10, 1983, President Reagan proclaimed a U.S. Exclusive Economic Zone (EEZ) which, inter alia, created a framework wherein U.S. jurisdiction with regard to the protection and preservation of the marine environment could be exercised or expanded as appropriate in accordance with international law. The Proclamation and Oceans Policy Statement made clear that the U.S. is willing to respect the maritime claims of others, including economic zones that are consistent with international law as reflected in the Law of the Sea Convention, provided that the rights and freedoms of the U.S. and others under international law are respected by the coastal State.

In this regard, although the Proclamation did not specifically mention dumping the Senior Interagency Report on the establishment of an EEZ stated the following:

Under the UNCLOS III Convention, the coastal State has jurisdiction over dumping of wastes (as defined) within the EEZ. By asserting an EEZ, we would be recognizing the rights of others to control this activity.

One issue to be considered by the IG is whether, concomitant with U.S. proclamation of its EEZ, we should officially recognize other States' jurisdiction over dumping out to 200 n.m. in the context of negotiations on the draft Convention for the Protection and Development of the Natural Resources and Environment of the South Pacific Region, and in the context of the London Dumping Convention.

2. ISSUE FOR DECISION

Should the Administration seek legislation extending U.S. jurisdiction over foreign dumping to coincide with its EEZ?

The U.S. EEZ Proclamation and accompanying Fact Sheet on U.S. Oceans Policy indicated that the establishment of the U.S. EEZ would promote protection of the marine environment, that, to the extent permitted by international law, within its EEZ, the U.S. has jurisdiction over protection and preservation of the marine environment, and that establishment of the U.S. EEZ would enable it to take limited additional steps to protect the marine environment. At issue is whether extension of U.S. jurisdiction over foreign dumping in the U.S. EEZ, in accordance with international law, would further our overall

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foreign policy energy, ocean law and policy and environmental interests.

Under current U.S. law, the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. §1401 et seq., the U.S. has jurisdiction over foreign dumping only within its territorial sea and contiguous zone to the extent dumping in the contiguous zone affects the U.S. territorial sea or territory.

If there is timely agreement by the IG, we believe that H.R. 1761, a bill to reauthorize the MPRSA, could provide a useful vehicle for amendment of the Act to extend U.S. jurisdiction over foreign dumping. We note that careful consideration would have to be given to the definition of dumping under the Act, as well as to the enforcement and penalties provisions to ensure that extension of U.S. jurisdiction through an amendment to the MPRSA would be consistent with our overall national interests and international law.

3. ISSUE FOR DECISION

What should be the U.S. position on whether sub-seabed disposal of high-level radioactive and other hazardous wastes is included in the definition of dumping at sea for purposes of the London Dumping Convention?

A Group of Legal Experts on Dumping will meet in London within the framework of the LDC, December 12-14, 1983, to discuss sub-seabed disposal of high-level radioactive wastes and capping of highly contaminated dredged material with clear sediments at sea (agenda attached). Although the legality of sub-seabed disposal under the LDC and international law in general (as well as under domestic law) has been considered by various U.S. agencies, it has never been fully vetted and agreed upon on an interagency basis. While it is not anticipated that the IG will discuss these matters in any detail at the August 15 meeting, it should be noted that IG involvement in the development of USG positions will be required in the coming months. A preliminary expression of agency views regarding the interpretation of the term "dumping" (agenda item 3) and possible control mechanisms for sub-seabed disposal (agenda item 4) may be useful as a basis for preparation of draft position papers to be considered by the IG at a later date. Close coordination must be maintained with our position in the OECD's Nuclear Energy Agency on this topic.

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Attachments:

1. Proclamation
2. Ocean Policy Statement and Fact Sheet
3. Legal Experts Meeting Agenda

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THE WHITE HOUSE

Office of the Press Secretary

EMBARGOED FOR RELEASE AT 4:00 PM EST

March 10, 1983

EXCLUSIVE ECONOMIC ZONE OF
THE UNITED STATES OF AMERICA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

RONALD REAGAN

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